

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>11/1/2023</u>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES GENCARELLI,

Plaintiff,

-against-

TOTO USA INC.,

Defendant.

23-CV-8438 (AT)

ORDER OF SERVICE

ANALISA TORRES, United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action invoking the Court’s diversity jurisdiction under 28 U.S.C. § 1332. He asserts state law claims against Defendant Toto USA Inc. (“Toto”). By order dated September 27, 2023, the Court granted Plaintiff’s request to proceed *in forma pauperis* (“IFP”), that is, without prepayment of fees. Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.¹ *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

To allow Plaintiff to effect service on Defendant Toto through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for this Defendant. The Clerk of Court is further instructed to issue

¹ Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and the complaint until the Court reviewed the complaint and ordered that the summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued.

summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Defendant.

If the complaint is not served within 90 days after the date the summons is issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is instructed to issue a summons for Toto USA Inc., complete the USM-285 form with the address for this defendant, and deliver all documents necessary to effect service to the U.S. Marshals Service.

Plaintiff's motion for permission to participate in electronic case filing in this case (ECF 2) is denied without prejudice to his completing [the attached form](#), which he may also access on the court's website at nysd.uscourts.gov.

SO ORDERED.

Dated: November 1, 2023
New York, New York



ANALISA TORRES
United States District Judge

DEFENDANT AND SERVICE ADDRESS

Toto USA, Inc.
1155 Southern Rd
Morrow, Georgia 30260

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff or petitioner.

No. ____ CV ____

-against-

**MOTION FOR PERMISSION FOR
ELECTRONIC CASE FILING**

Write the full name of each defendant or respondent.

I respectfully ask the Court for permission to participate in electronic case filing ("e-filing") in this case. I affirm under penalty of perjury that:

1. I have reviewed the Court's Electronic Case Filing Rules & Instructions, available at http://nysd.uscourts.gov/ecf_filing.php, and agree to abide by them.
2. I completed the Court's CM/ECF introduction course¹ on _____.
3. I have submitted a Non-Attorney E-File Registration for the PACER system at https://www.pacer.gov/reg_nonatty.html.
4. I understand that once I register for e-filing, I will receive notices and documents only by e-mail in this case and not by regular mail.
5. I understand that if I am granted permission to participate in e-filing, I must file my documents electronically and I may not submit documents to the Pro Se Intake Unit for scanning and docketing.
6. I know how to convert a document to PDF-A format.
7. I have regular access to the technical requirements necessary to e-file successfully:

☐ a computer with internet access and a word processor

type of computer I will be using: _____

¹ You may register for the course on the Court's website: http://nysd.uscourts.gov/ecf_training.php.

type of word processor I will be using: _____

- ☐ an e-mail account (on a daily basis) to receive notifications from the Court and notices from the e-filing system
- ☐ a scanner to convert documents that are only in paper format into electronic files

scanning equipment I will be using: _____

- ☐ a PDF reader and a PDF writer to convert word-processing documents into PDF format, the only electronic format in which documents can be e-filed

version of PDF reader and writer that I will be using:

- ☐ a printer or copier to create required paper copies such as chambers copies.

8. I understand that I must regularly review the docket sheet of the case so that I do not miss a filing.
9. I understand that if my use of the ECF system is unsatisfactory, my e-filing privileges may be revoked, and I will be required to file documents in paper.

Dated

Signature

Name

Address City State Zip Code

Telephone Number

E-mail Address